

Amendment and Response

Applicant: Philip K. Zietlow et al.

Serial No.: 09/887,702

Filed: March 1, 2001

Docket No.: 5183USAD1

Title: METHOD AND APPARATUS FOR PROCESSING AN AERATED CONFECTIONERY FOAM ROPE**REMARKS**

This Amendment is responsive to the Office Action mailed December 12, 2003. Claims 36-40 have been withdrawn from consideration. Claims 17-29 and 31-35 were rejected and claim 26 was objected to. The Examiner also indicated that claim 30 would be allowable if amended to independent form, to include the limitations of independent claim 17, as well as all intervening claims. With this Response, claims 17, 23, and 26 have been amended. Claims 17-35 remain pending in the application and are presented for reconsideration and allowance. In addition, newly added claim 41 is also presented for consideration and allowance.

Objection to the Title and Disclosure

On page 2 of the Office Action, the Examiner indicated that the title should be updated to reflect the elected invention. With this Amendment, the Title has been amended accordingly. The Examiner also objected to the disclosure on the basis of minor informalities. With this Amendment, the Specification has been amended to correct these minor informalities. Therefore, Applicants request that the objection to the Title and Specification be withdrawn.

Objection to Claim 26 Under 37 C.F.R. 1.75(c)

The Examiner objected to claim 26 under 37 C.F.R. 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. With this Amendment, it is believed that claim 26 as amended incorporates structural limitations, specifically the relative positions of the drive roller and the conveyor. As such, it is respectfully requested that the Examiner's objection to claim 26 on the basis that it fails to further limit the subject matter of the previous claim under 37 C.F.R. 1.75(c) be withdrawn.

Claim Rejections under 35 U.S.C. §102(b)

Claims 17-20, 31 and 32 were rejected under 35 U.S.C. §102(b) as being anticipated by Washburn, U.S. Patent No. 3,076,999 ("Washburn").

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Independent claim 17 as amended relates, in part, to a system for processing at least one rope of aerated confectionary foam, the system comprising an aerated confectionery foam stream and an extruder configured to extrude at least one rope of aerated confectionary foam from the stream. For at least the reasons below, Washburn fails to teach or suggest such limitations.

Washburn fails to teach or suggest “an aerated confectionary foam stream to be extruded” as required by claim 17 as amended. Thus, Washburn fails to anticipate claim 17 as Washburn fails to teach or suggest all the recited elements of the claim.

Additionally, Washburn fails to teach or suggest an extruder configured to extrude at least one rope of aerated confectionary foam. In particular, Washburn specifically teaches an extruder configured to extrude strands of thermoplastic material. (See Washburn at column 1, lines 52-55 and column 2, at lines 29-30).

Further, it is respectfully submitted that Washburn cannot teach or suggest the claimed matter for the additional reason that it presents non-analogous art. Washburn relates to the extrusion and cutting of thermoplastic materials. More particularly, Washburn relates to extruding thermoplastic strands, drawing the strands in a liquid coolant via the cooperative travel of two belts, and cutting the strands into thermoplastic pellets or beads. Simply stated, the confectionery arts, including extruding and cutting confectionery foam, is entirely unrelated to an apparatus for liquid cooling and cutting extruded polymer. See *In re Oetiker*, 24 USPQ2d 1443 (Fed. Cir. 1992) (cited in MPEP section 2141.01(a)). Not all extrusion or cutting problems are analogous. The extrusion, liquid cooling, and cutting of a molten thermoplastic strand is not analogous to the extrusion and cutting of confectionery foam rope. As such, Washburn fails to teach or suggest claim 17 as amended.

For at least the reasons above, Washburn fails to teach or suggest the elements of claim 17 as amended. As claims 18-20, 31 and 32 depend from claim 17, their rejection is traversed for reasons similar to those stated with respect to claim 17 as amended. Therefore, Applicants respectfully request that the rejection of claims 17-20, 31, and 32 under 35 U.S.C. §102(b) be withdrawn.

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Claim Rejection under 35 U.S.C. §103(a)

Dependent claims 21-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Washburn in view of Jehle, U.S. Patent No. 2,335,515 ("Jehle"). In rejecting those claims the Examiner stated that Washburn fails to disclose (a) an anvil support bar being recessed for directing cut pieces away from a cutting zone, (b) a spacing of the anvil support bar and a rotary cutter being approximately .005 inches, and (c) a drive roller cooperating with a leading end of a conveyer. Claims 21, 22, 24-26, and 33-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Washburn in view of Hoshi, U.S. Patent No. 5,658,601 ("Hoshi"). In that rejection, the Examiner recognized that Washburn fails to teach or suggest (d) rotary cutter blades having a cutting angle of 25 degrees, 45 degrees, or 35 degrees, with (e) the material face of the blades being substantially perpendicular to a material during a cutting operation. Claims 28 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Washburn in view of Abe, U.S. Patent No. 4,120,627 ("Abe"). In that rejection, the Examiner recognized that Washburn fails to teach or suggest (f) a starch depositor located between an extruder and a rotary cutter, with (g) a shroud surrounding the rotary cutter.

All claims rejected under 35 U.S.C. §103(a) are dependent claims, depending from independent claim 17. As previously discussed, it is believed that claim 17 is patentably distinguishable over the cited art. Therefore, all dependent claims are also patentably distinguishable over the cited art. In addition, several dependent claims are distinguishable over the cited art for additional reasons.

With respect to claims 24-27, the Examiner stated that one of the ordinary skill in the art would be motivated to modify Washburn to include the driver roller of Jehle in order to facilitate movement of material to be cut into a rotary cutter, and in order to regulate material height. The Examiner cited the same motivation for combining the drive roller of Hoshi with Washburn to reject claims 24-26 on a similar basis. However, the motivation cited by the Examiner is improper as Washburn facilitates the movement of the strands 9 between the belts 12 and 15 at a controlled separation or height, with additional disclosed advantages. In particular, Washburn expressly teaches the advantages of a primary belt 12, covered with a secondary belt 15, with the

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two belts 12, 15 (described in another embodiment as 31 and 40) acting to retain coolant between the belts while conveying strands 9.

Washburn discloses that this configuration enables both cooling of the strands 9 and drawing of the strands 9 to the cutter 21. As an additional matter, the two belts have to be at some fixed distance in order to retain the coolant, which accomplishes the Examiner's other cited motivation, controlling strand height. As such, one of ordinary skill in the art would not be motivated to modify Washburn to include the drive roller of Jehle or Hoshi instead of providing the additional benefit of cooling the thermoplastic strands. (Washburn, column 3, lines 4-16). In fact, Washburn inherently teaches omission of a drive roller as the belts 9, 15 "should be arranged to discharge the strands very close to the knife edge" in order to minimize movement of the strands just prior to cutting. (Washburn, column 3, lines 26-29). In this manner, the belts 12, 15 are expressly taught as preferably delivering the strands 9 to the cutter 21 without the aid of a drive roller. Thus for at least these additional reasons, the cited references fail to teach or suggest the limitations of claims 24-27.

The Examiner rejected claims 28 and 29 as being unpatentable over Washburn in view of Abe. The Examiner cited the desire to provide a non-stick coating as motivation to combine the cited references. As previously mentioned, Washburn discloses two belts 12, 15 acting to retain a coolant between the belts while conveying strands 9 very close to the knife edge. It is believed that the fluid cooled system disclosed in Washburn teaches away from the incorporation of a powder supply means as required by the limitations of claims 28 and 29. The combination of the fluid coolant of Washburn with the powder supply of Abe would fail to provide a non-stick coating. Clearly, the powder would get wet. Thus, there would be no motivation to combine the two as the combination of the cited references would defeat the desired functionality, or "render the reference inoperable for its intended purpose" (MPEP §2143.01). As their combination is improper, the cited references fail to teach or suggest the limitations of claims 28 and 29 for at least the additional reasons outlined above.

For the reasons stated above, Applicants respectfully request that the rejection of claims 21-29 and 30-35 under 35 U.S.C. §103(a) be withdrawn.

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Newly Added Claim

The Examiner objected to claim 30 as being dependent upon a rejected base claim, but indicated that it would be allowable if rewritten in independent form. With this Amendment, claim 41 has been added to include all limitations of previously submitted claim 30 and base claim 17. Consideration and allowance of claim 41 is respectfully requested.

Allowable Subject Matter

In light of the above, Applicant believes independent claims 17 and 41 and the claims depending therefrom, are in condition for allowance. Therefore, allowance of these claims and notice to that effect is respectfully requested.

CONCLUSION

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

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The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

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By their attorneys,

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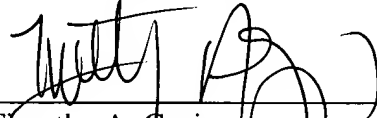
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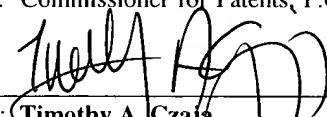
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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 12th day of March, 2004.

By 
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